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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE MANUEL GONZALEZ,

Defendant and Appellant.

B295145

(Los Angeles County
Super. Ct. No. BA361611)

APPEAL from a judgment of the Superior Court of
Los Angeles County, George G. Lomeli, Judge. Affirmed.

Marilee Marshall, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Steven E. Mercer and Michael C. Keller,
Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Jose Manuel Gonzalez was convicted of murder, attempted murder, and other crimes. We upheld the convictions on appeal, but remanded for reconsideration of sentencing on certain firearm enhancements under the recently amended Penal Code section 12022.53.¹ After the trial court declined to strike the firearm enhancements, defendant appealed. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The facts of the case are summarized in *People v. Gonzalez* (July 25, 2018, B255725 [nonpub. opn.]), the direct appeal from defendant's convictions, and we do not repeat them here. In short, after a jury trial, defendant and a codefendant were convicted of murder with special circumstances of lying in wait, attempted murder, shooting from a motor vehicle, and illegal possession of a firearm. The jury also found true various gang and firearm enhancements.

In total, the trial court sentenced defendant to life without the possibility of parole, plus 64 years to life, plus 8 years. On count 1, the murder count, the court sentenced defendant to life without the possibility of parole plus 25 years to life on the firearm enhancement under section 12022.53, subdivisions (d) and (e). On count 2, attempted murder, the court sentenced defendant to a consecutive sentence of seven years to life, doubled to 14 years to life due to defendant's prior strike conviction, plus a consecutive term of 25 years to life for the firearm enhancement under section 12022.53, subdivisions (d) and (e). The sentences

¹All further statutory references are to the Penal Code unless otherwise indicated.

on the additional counts and the enhancements are not relevant to this appeal.

After defendant was sentenced and before we issued our previous opinion, section 12022.53 was amended to give the trial court the discretion to strike a section 12022.53 firearm enhancement. “When appellant was originally sentenced . . . the trial court had no discretion to strike or dismiss a firearm use enhancement. [Citation.] However, Senate Bill No. 620 amended [section 12022.53], effective January 1, 2018, to give the trial court discretion, in limited circumstances, pursuant to section 1385, to strike a firearm enhancement in the interest of justice. [Citation.] Subdivision (h) of section 12022.53 now provides, ‘The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.’” (*People v. Johnson* (2019) 32 Cal.App.5th 938, 941.) In our previous opinion, we remanded the case to allow the trial court to exercise its discretion under section 12022.53, subdivision (h) to strike the firearm enhancements. (See *People v. Gonzalez* (July 25, 2018, B255725 [nonub. opn.].)

On remand, the trial court held a hearing regarding resentencing. Defense counsel argued that there was insufficient proof that defendant was the shooter, “[s]o I think the court does have discretion to not impose the enhancement based on that.” The prosecution noted the gang allegations, the lying in wait special circumstance, and the brutal nature of the crimes. The judge stated that he had presided over the trial, and had reviewed the case file. The court stated, “[F]ollowing careful

review of the circumstances and the factual scenario which give rise to the criminal charges that the defendant stands convicted of, as well as the overall evidence presented in the trial, the overall record, this court elects not to exercise its discretion to strike and/or dismiss the firearm enhancement that the defendant stands convicted of.”

Defendant appealed.

DISCUSSION

Defendant asserts that the trial court “abused its discretion in refusing to strike either or both of the firearm enhancements [sic].” He argues that “it is clear that the trial court abused its discretion” because “[a]bsent the two firearm enhancements, appellant’s sentence would still have been life without the possibility of parole for the murder plus 14 to life for the attempted murder plus 8 year [sic] for the priors.” Defendant asks that the case be remanded with directions to the trial court to “consider the length of the sentence which by definition cannot be completed within [defendant’s] life time.”

The Attorney General asserts that a “trial court has no obligation to strike a firearm enhancement merely because a defendant has been sentenced to LWOP,” and given the nature of the crime, “the court acted well within its discretion in refusing to strike the enhancements.” In reply, defendant states that he is not “arguing that the court was obliged to strike the enhancements merely because appellant received a sentence of LWOP on the substantive offense. . . . Rather[,] appellant is positing that the court did not give meaningful consideration as to why it may be appropriate choose [sic] to exercise its discretion to strike the enhancements.” Defendant also states that “[t]he court, in fact stated no reasons for its sentencing choice.”

Defendant's premise is contradicted by the record. The judge stated that he recalled the case, reviewed the file, considered the counts and enhancements that served as the basis of the sentence, and then declined to strike the firearm enhancements based on those considerations. Defendant has cited no authority, and we have found none, supporting defendant's position that the trial court abused its discretion by failing to do more. Thus, defendant has not met his burden to show that the trial court abused its discretion in refusing to strike the firearm enhancements under section 12022.53, subdivision (h). (See, e.g., *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573 ["Perhaps the most fundamental rule of appellate law is that the judgment challenged on appeal is presumed correct, and it is the appellant's burden to affirmatively demonstrate error."].)

DISPOSITION

Affirmed.

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COLLINS, J.

We concur:

MANELLA, P. J.

WILLHITE, J.